

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:10cv289**

WENDY OLSEN, )  
                    )  
Plaintiff,       )  
                    )  
v.                  )                           **ORDER**  
                    )  
                    )  
DAYMARK RECOVERY SERVICES, )  
                    )  
Defendant.       )  
                    )  
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Previously, the Court entered a pretrial Order in this case setting the summary judgment deadline for November 1, 2011. Defendant moved for summary judgment on October 28, 2011. Plaintiff, who is proceeding *pro se*, filed a response to the motion. The Court then entered an Order pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), explaining the process of responding to a motion for summary judgment and granted Plaintiff an opportunity to file a supplemental response to the Motion for Summary Judgment. In response to the Court's Roseboro Order, however, Plaintiff filed a pleading styled as a motion for summary judgment [# 24]. Defendant then moved to strike Plaintiff's motion [# 25]. Finally, Plaintiff requested an extension of time to respond to the Motion to Strike [# 27].

- Upon a review of the parties' briefs and the record in this case, the Court
- DIRECTS** the parties as follows:
- (1) The Court **DENIES without prejudice** the Motion to Strike [# 25].
  - (2) Because the time for filing a motion for summary judgment expired prior to Plaintiff filing her motion, and because the Court's Roseboro Order only addressed allowing Plaintiff leave to file a supplemental response to the Defendant's Motion for Summary Judgment, the Court will construe the pleading as Plaintiff's supplemental response to the Motion for Summary Judgment. The Court will not entertain an untimely motion for summary judgment. Accordingly, to the extent that Plaintiff intended to assert a motion for summary judgment in her pleading, the Court **DENIES** the motion [# 24] as untimely.
  - (3) In considering Plaintiff's pleading [# 24] as a supplemental response, however, the Court will disregard any evidence submitted by the Plaintiff that would be improper for the Court to consider at the summary judgment stage.
  - (4) The Court will consider the argument contained in pages 12-23 of Defendant's Motion to Strike as a supplemental reply in response to Plaintiff's supplement response.

(5) Finally, the Court **DENIES as moot** the Motion for Extension of Time [# 27].

Signed: January 11, 2012

Dennis L. Howell

Dennis L. Howell  
United States Magistrate Judge

